

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

December 11, 2007

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No. 07-10309  
Conference Calendar

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Charles R. Fulbruge III  
Clerk

FABIAN THOMAS MARTIN

Plaintiff-Appellant

v.

JAMES V ALLRED ADMINISTRATIVE STAFF; WILLIAM DUCKSWORTH;  
DOUGLAS L SHAW

Defendants-Appellees

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 7:06-CV-33

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Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:\*

Fabian Thomas Martin, Texas prisoner # 595332, moves this court for permission to appeal in forma pauperis (IFP) from the dismissal of a civil rights complaint alleging that prison employees failed to protect him from an attack by another inmate. The district court denied Martin's IFP motion and certified that the appeal was not taken in good faith. By moving for leave to proceed IFP, Martin is challenging the district court's certification. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Martin's appellate pleadings address only his financial status and do not identify any error in the district court's rejection of his claims as frivolous. Therefore, Martin has not shown that the district court erred in determining that his appeal would be frivolous. *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). The instant appeal is without arguable merit and is thus frivolous. Accordingly, Martin's motion to proceed IFP on appeal is denied and the appeal is dismissed. See *Howard v. King*, 707 F.2d 215, 219-220 (5th Cir. 1983); 5TH CIR. R. 42.2.

The district court's dismissal of Martin's complaint and this court's dismissal of his appeal count as two strikes under 28 U.S.C. § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 387 (5th Cir. 1996). Martin also accumulated a strike in *Martin v. Good*, No. 95-CV-669 (W.D. Tex. Nov. 16, 1995). As Martin has now accumulated at least three strikes, he is barred from proceeding IFP pursuant to § 1915 while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See § 1915(g).

IFP DENIED; APPEAL DISMISSED; 28 U.S.C. § 1915(g) BAR IMPOSED.